

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015-2016 Regular Session

AB 1448 (Lopez)
Version: June 16, 2015
Hearing Date: July 7, 2015
Fiscal: No
Urgency: No
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SUBJECT

Personal Energy Conservation: Real Property Restrictions

DESCRIPTION

This bill would require a landlord to allow a tenant to use a clothesline or drying rack in the private area of a tenant's rental tenancy if certain conditions are met, including that the clothesline or drying rack will not interfere with the maintenance of the rental property. This bill would also render any provision of a common interest development governing document void and unenforceable if it effectively prohibits or unreasonably restricts the use of a clothesline or a drying rack in an owner's backyard.

BACKGROUND

In California, common interest developments (CIDs) are governed by the Davis-Stirling Common Interest Development Act. Owners of separate property in CIDs have an undivided interest in the common property of the development and are subject to the CID's covenants, conditions, and restrictions. CIDs are also governed by a homeowners association, which is run by volunteer directors that may or may not have prior experience managing an association. The Court of Appeal, Fourth Appellate District, previously observed that:

[t]he homeowners associations function almost "as a second municipal government, regulating many aspects of [the homeowners'] daily lives."
"[U]pon analysis of the association's functions, one clearly sees the association as a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. As a 'mini-government,' the association provides to its members, in almost every case, utility services, road maintenance, street and common area lighting, and refuse removal. In many cases, it also provides security services and various forms of communication within the community. There is, moreover, a clear analogy to the municipal police and public safety functions. . . ." In short, homeowners associations, via

their enforcement of the CC&R's, provide many beneficial and desirable services that permit a common interest development to flourish. (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836 [citations omitted].)

Separately, existing landlord-tenant law regulates the terms and conditions of residential tenancies, allowing landlords to oversee the use of leased or rented real property in certain circumstances, and providing specified tenant protections for the use of rental property. This bill would add to the Davis-Stirling Act and to California's landlord-tenant laws specific protections for homeowners and tenants to use clothesline or drying racks on residential property under specified conditions.

This bill was heard by the Senate Transportation and Housing Committee on June 23, 2015, and passed out on a vote of 8-1.

CHANGES TO EXISTING LAW

1. Existing law regulates the terms and conditions of residential tenancies and generally requires a landlord to keep a rental unit in a condition fit for occupancy. (Civ. Code Sec. 1940 et seq.)

Existing law creates an implied covenant of quiet enjoyment in every lease, requiring that the tenant shall not be disturbed in his or her possession by the landlord. (Civ. Code Sec. 1927; *Pierce v. Nash* (1954) 126 Cal.App.2d 606, 612.)

Existing law regulates the purposes for which a renter's security deposit may be used, including, but not limited to, compensating the landlord for default on payment of rent, cleaning or repairing rented property, exclusive of normal wear and tear, or remedying future obligations under the rental agreement, as specified. (Code Civ. Proc. Sec. 1950.5 (a)-(e).)

This bill would provide that a tenant may utilize a clothesline or drying rack in the tenant's private area if approved by the landlord, and subject to reasonable time or location restrictions, if all of the following conditions are met:

- the clothesline or drying rack will not interfere with the maintenance of the rental property;
- the clothesline or drying rack will not create a health or safety hazard, block doorways, or interfere with walkways or utility service equipment; and
- the tenant seeks the landlord's consent before affixing a clothesline to a building.

This bill would provide the following definitions:

- The term "clothesline" means a cord, rope, or wire from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a clothesline.

- The term “drying rack” means an apparatus from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a drying rack.
 - The term “private area” means an outdoor area or an area in the tenant’s premises enclosed by a wall or fence with access from a door of the premises.
2. Existing law, the Davis-Stirling Common Interest Development Act, establishes the rules and regulations governing the operation of a common interest development (CID) and the respective rights and duties of a homeowners association (HOA) and its members. (Civ. Code Sec. 4000 et seq.)

Existing law permits the governing board of an HOA to adopt operating rules that apply generally to the management and operation of the CID or the conduct of the business and affairs of an HOA, provided that the rule is within the authority of the board to make, does not conflict with the HOA’s articles, bylaws, or governing law, and is reasonable. (Civ. Code Secs. 4340, 4350.)

Existing law limits the authority of an HOA or the governing documents of a CID to regulate the use of a member’s separate interest. (Civ. Code Sec. 4700 et seq.)

This bill would state that any provision of a CID governing document shall be void and unenforceable if it effectively prohibits or unreasonably restricts an owner’s ability to use a clothesline or drying rack in the owner’s backyard.

This bill would not apply to reasonable restrictions imposed by CID governing documents conditioning the use of a clothesline or drying rack in an owner’s backyard, and would not prohibit an HOA from establishing and enforcing reasonable rules governing clotheslines or drying racks.

This bill would apply only to backyards that are designated for the exclusive use of the owner.

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- “drying rack” means an apparatus from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a drying rack; and
- “reasonable restrictions” means restrictions that do not significantly increase the cost of using a clothesline or drying rack.

COMMENT

1. Stated need for the bill

The author writes:

Nationwide, there is a growing movement to allow citizens the personal freedom of hang-drying their clothing harnessing the power of the sun. Six states, Florida, Maine, Utah, Vermont, Colorado, and Hawaii have a statute that overrides or strikes all contractual and covenantal provisions prohibiting the use of clotheslines. The usage of a clothesline and the harnessing of solar power promotes energy conservation in a low-tech, low-cost manner.

Using an indoor, electrical dryer is one of the top ten energy-consuming household appliance[s]. According to the United States Energy Information Administration, a typical U.S. household could save an average 1,500 pounds of carbon dioxide from being released into the atmosphere by foregoing the use of an electric dryer and drying clothes using a clothesline. Unfortunately Californians are experiencing utility shutoffs in large numbers and many Californians rely on clotheslines to alleviate high energy costs.

However, in many locations across California, Homeowners' Associations, Condo Associations, and Apartment Associations deny a person's right to utilize the power of the sun, limit[ing] a low-tech energy conservation tool, and prevent[ing] the use of clotheslines, or hanging rack[s], to dry your clothes.

Due to the ambiguity in current law, many homeowners, condominium, [and] apartment associations have an outright ban on the use of clotheslines. This ban prevents low-income families and energy conscious persons from using a low-cost, low-tech energy conservation tool. This bill would ensure that associations and landlords cannot enforce an outright prohibition on the use of a clothesline or drying rack in a person's private area if certain conditions are met.

2. Clothes Dryer Energy Consumption

"Clothes dryers can be one of the most expensive home appliances to operate, using approximately 6 percent of a home's total electricity usage." (California Energy Commission, *Clothes Dryers* <<http://www.consumerenergycenter.org/residential/appliances/dryers.html>> [as of Jun 24, 2015].) A recent media report states that "[d]ryers are the number two home appliance in energy usage," and "[o]verall, dryers in the U.S. emit 32 million metric tons of carbon dioxide per year, according to the Environmental Protection Agency, and use 43 billion kilowatt hours and 443 million therms of natural gas." (Laurie Reeves, *The Average Cost an Hour to Run a Dryer*

<<http://homeguides.sfgate.com/average-cost-hour-run-dryer-68320.html>> [as of Jun. 24, 2015].) According to the California Energy Commission:

Unlike other appliances, clothes dryers don't vary much from brand to brand and model to model in the amount of energy used. (That's why the Federal Trade Commission does not require clothes dryers to have a yellow EnergyGuide label.) All clothes dryers being sold today operate the same way - they use electricity to turn a drum that tumbles clothes through heated air to remove moisture. But operating costs vary depending if that air is heated by natural gas or electricity.

Electric dryers use heating coils, while gas dryers use a gas burner to produce heat. Gas dryers cost approximately \$50 more to purchase initially, but since natural gas is usually less costly than electricity, gas dryers cost less to operate. Depending on your utility, drying a load of laundry can cost between 32 to 41 cents in an electric dryer, or 15 to 33 cents in a gas dryer. Gas dryers tend to operate at a hotter temperature than electric ones, so clothes can tumble in the dryer for shorter periods, sparing the material and reducing energy costs. Thus a gas dryer can save you up to 50 percent in energy costs. (California Energy Commission, *Clothes Dryers* <<http://www.consumerenergycenter.org/residential/appliances/dryers.html>> [as of Jun 24, 2015].)

To avoid the costs and environmental impacts associated with using clothes dryers, the Energy Commission recommends individuals consider using clotheslines. The Commission states:

Let the heat of the sun dry your clothes, and [d]on't use the clothes dryer at all. Some homeowners' associations and cities, however, have local CC&Rs that restrict the use of clotheslines in planned communities. So, check the covenants, codes and restrictions covering your property to see if you can use this effective, almost cost-free drying alternative. But even if you can't use a clothesline, you can set up a small standalone clothes rack to dry shirts and other small items. (*Id.*)

3. Permissible use of Clotheslines and Drying Racks

This bill would require homeowners associations in common interest developments (CIDs) and landlords who rent residential property to allow the use of clotheslines and drying racks in private spaces under the exclusive control of an owner, in the case of a common interest development, or a renter, in the case of a residential tenancy. Renters would be authorized to use a clothesline or drying rack in the private area of their tenancy, like a backyard, if they get approval of their landlord and the clothesline or drying rack does not interfere with the maintenance of the rental property, does not create a health or safety hazard, block doorways, or interfere with walkways or utility service equipment, and if the tenant seeks the landlord's consent before attaching a clothesline to a building. Owners of separate interests in a CID would be free to use

clotheslines and drying racks, subject to reasonable restrictions imposed by the CID, in backyards that are designated for the exclusive use of the owner. This bill would not preclude CIDs from restricting the use of clotheslines in other areas of a separate interest, like a front yard, or in common areas.

The Chinatown Community Development Center, writing in support, states:

Many clients from our housing counseling program are low income and cannot afford professional laundry services and/or do not have access to laundry facilities within their unit or building. In addition, through housing counseling, we have seen landlords use doing laundry as a reason to evict tenants from their homes.

...

AB 1448 would prevent the outright prohibition of a clothesline in a person's private area. Chinatown Community Development Center understands that there may be a need to regulate or apply certain limitations to such clothesline usage; however an outright ban would be contrary to our state's movement towards energy efficiency and environmental consciousness.

4. Clarifying Amendments

As the author notes in Comment 1 above, the intent of this bill is to ensure that homeowner associations and landlords cannot enforce an outright prohibition on the use of a clothesline or drying rack so long as certain conditions are met. However, as drafted, the section of the bill addressing landlords appears to give them plenary authority to refuse a tenant's request to use these implements, stating "a tenant may utilize a clothesline or drying rack if approved by the landlord . . ." To address this incongruity, the author offers the following amendments which would clarify that approval may only be withheld if use of a clothesline or drying rack would contravene the conditions listed in the bill:

Author's Amendments:

On page 2, lines 16 to 18, strike "if approved by the landlord, and subject to reasonable time or location restrictions,"

On page 2, following line 26, insert: "(4) Use of the clothesline or drying rack does not violate reasonable time or location restrictions imposed by the landlord."

Support: California Municipal Utilities Association; California State Grange; Chinatown Community Development Center; Conference of California Bar Associations; Consumer Federation of California; Natural Resources Defense Council; Sebastopol Grange # 306

Opposition: None Known

HISTORY

Source: Utility Reform Network

Related Pending Legislation: AB 349 (Gonzalez, 2015) would make void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development that prohibits use of artificial turf or any other synthetic surface that resembles grass. This bill would also prohibit a common interest development from requiring an owner of a separate interest remove or reverse water-efficient landscaping measures, installed in response to a declaration of a state of emergency, upon the conclusion of the state of emergency. This bill is pending in the Senate Judiciary Committee.

Prior Legislation:

AB 2561 (Bradford, Ch. 584, Stats. 2014) required landlords to permit tenants to participate in personal agriculture in portable containers approved by the landlord in the tenant's private area so long as certain conditions are met. This bill also rendered void any provision of a governing document of a common interest development that effectively prohibited or unreasonably restricted the use of a homeowner's backyard for personal agriculture.

AB 2565 (Muratsuchi, Ch. 529, Stats. 2014), among other things, rendered void any term in a lease renewed or extended on or after January 1, 2015, that conveys any possessory interest in commercial property that either prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a parking space associated with that commercial property. This bill also prescribed requirements for lessor approval of a lessee's request to install or use an electronic vehicle charging station, and required that a lessor approve a request to install a charging station if the lessee agrees in writing to do specified acts, including paying for various costs associated with the charging station and maintaining insurance naming the lessor as an insured.

SB 209 (Corbett, Ch. 121, Stats. 2011) rendered void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, or any provision of the governing documents of a common interest development, that effectively prohibits or restricts the installation or use of an electrical vehicle charging station. This bill authorized a common interest development to impose reasonable restrictions on the approval and installation of those stations.

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AB 2376 (Bates, Ch. 346, Stats. 2004) required a homeowners association to provide a fair and reasonable process for reviewing a request by a homeowner for a physical alteration to their unit or the common area.

Prior Vote:

Senate Transportation and Housing Committee (Ayes 8, Noes 1)

Assembly Floor (Ayes 52, Noes 18)

Assembly Housing and Community Development Committee (Ayes 5, Noes 2)

Assembly Judiciary Committee (Ayes 6, Noes 3)
